IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/06/2002

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION (P.D.) NO.861 OF 2002
AND
C.M.P.NO.6960 OF 2002.

K.M.Hameed Sultan ... Petitioner

-Vs-

1.K.M.Mohammed Abubacker Siddique
2.K.M.Mohamed Younus
3.K.M.Akbar Ali
4.K.M.Mohamed Idris
5.K.M.Musthafa Kamaludeen
6.K.M.Mohamed Yousuff
7.K.M.Umar Farooq
8.K.M.Fairouse Khan
9.Shaik Minhaj Firdose ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 2.5.2002 made in I.A.No.142 of 2002 in O.S.No.36 of 2002 by the Court of District Munsif, Kamudhi.

!For petitioner : Mr.M.Venkatachalapathy,
senior counsel for M/s.M.Sriram

^For Respondent No.1 : Mr.S.S.Rajesh

:O R D E R

The petitioner/4th respondent in I.A.No.142 of 2002 and the fourth defendant in O.S.No.36 of 2002 has filed the above Civil Revision Petition praying to set aside the order dated 2.5.2002 made in I.A.No.14 2 of 2002 in O.S.No.36 of 2002 by the Court of District Munsif, Kamudhi.

2. On facts, the petitioner would allege that he is a shareholder Director of Mohamed Idris Brothers Private Limited, a company registered under the Companies Act, 1956 having 1/7 shares in the said company; that originally joining hands with his brothers, numbering six, he incorporated the said company on 8.12.1989 and in the course of business, the firm adopted the trade mark KIBS and became popular; that in the second week

of October, 2001, the petitioner was given to understand that four of his brothers viz. 1.K.M.Mohammed Idris, 2.K.M. Mohammed Younus, 3.K.M.Mustaffa Kamalluddin and 4.K.M.Akbar Ali got themselves respectively allotted 2000, 2060, 2120 and 2180 equity shares of the said company at face value purported to have been made in lieu of sale consideration for the alleged sale of their respective undivided share in the property at 190, Thambu Chetty Street, Chennai-60 0 001 in an illegal and arbitrary manner and in violation of the provisions of the Companies Act resulting in the petitioner filing a suit in O.S.No.6404 of 2001 on the file of the XVIII Assistant City Civil Court, Chennai for a declaration that the issue of equity shares by the company to the aforementioned persons is illegal and unlawful and contrary to the provisions of the Companies Act and void ab initio and for permanent injunction restraining the said company from in any manner giving effect to the said shares issued to the said persons. The further case of the

petitioner is that he also took out I.A.No.18 895 of 2001 seeking interim injunction and the same was ordered on 8.11.2001 as an interim measure which on contest was made absolute by the said Court.

3. The further case of the petitioner is that he requisitioned the company to convene an Extraordinary General Meeting under Section 16 9 of the Companies Act to consider and pass resolutions as mentioned in the notice dated 22.3.2002 and accordingly by notice dated 26.3.20 02, an Extraordinary General Meeting was convened on 17.4.2002 to consider the resolutions; that while so, one of the shareholders of the company, the 8th respondent, having only 100 shares, also filed a suit on the file of the Court of VI Assistant City Civil Court, Chennai on 15.4.2002 impleading only the company as the defendant for declaration that the notice dated 26.3.2002 convening the Extraordinary General Meeting on 17.4.2002 and the resolution proposed thereat are void ab initio and for permanent injunction restraining the second respondent company from issuing any further shares to any person/ shareholder either by way of right, bonus or otherwise; that in the said suit, the 8th respondent took out an application in I.A.No.6337 of 2002 seeking interim injunction restraining the company from proceeding with the Extraordinary General Meeting to be held on 17.4.2002 and not to consider any of the resolutions proposed in the notice dated 26.3.20 02 or any other meeting of such type; that on coming to know the filing of the said suit, petitioner filed I.A.No.6495 of 2002 to implead himself as a party defendant in I.A.No.6337 of 2002 , but the said Court while ordering notice in I.A.No.6495 of 2002 returnable by 16.7 .2002, had allowed the I.A.No.6337 of 2002 by order dated 16.4.2002 thus directing the company not to hold the meeting on 17.4.2002, which is a gross injustice done to the petitioner with denial of opportunity to put forth his case in I.A.No.6337 of 2002 resulting in the petitioner's impleading application becoming infructuous and hence he filed C.R.P.No.689 of 2002 before this Court and the same is pending; that as the company did not convene the meeting, the petitioner along with other requisitionist Mr.K.M.Muhammed Yousuff exercising the powers under Section 169(6) of the Companies Act issued a notice convening Extraordinary General Meeting on 23.5.2002 to consider and pass the resolutions as per the requisition dated 22.3.2002 at which point of time, the petitioner received

the order in I.A.No.142 of 2002 in O.S.No.36 of 2002 filed by the first respondent herein before the Court of District Munsif, Kamudhi restraining the petitioner and other Directors from convening any Board or General Meeting and allotting fresh shares. Therefore, the petitioner has come forward to file the above Civil Revision Petition.

4. No counter would be filed on the part of any of the respondents. But, the learned counsel appearing on behalf of the first respondent would choose to argue on instructions.

5. So far as the petitioner is concerned, the learned senior counsel Mr.M.Venkatachalapathy would not only point out that the first respondent is the contesting party so far as the above Civil Revision Petition is concerned, but also would give up the other respondents being formal parties to the contest and would bring forth the salient features from out of the factual position of the case pleaded on the part of the revision petitioner. The learned senior Counsel would make a particular mention of the first respondent having only a meager 100 shares as against the total number of 29240 shares and that he is challenging and making the activities of the petitioner and company stand still in spite of the petitioner being one of the major shareholders and founder director of the company. Regarding jurisdiction, the learned senior counsel would point out the wrong address offered by the first respondent as the plaintiff in the suit as it is glaringly seen in the very cause title itself whereas the permanent address and the place of residence is given in the paragraph No.11 of the plaint to be Madurai, which has been offered as his permanent residence in the memorandum and Articles of Association and therefore, the very suit filed before the lower Court by the first respondent is without jurisdiction.

6. At this juncture, the learned counsel would cite a decision reported in BLOOM DEKOR LIMITED Versus SUBHASH HIMATLAL DESAI AND OTHERS(1994)6 SCC 322, wherein the Apex Court remarking that "the respondents therein were indulging in judicial adventurism by filing suits at places away from the registered office of the company where no cause of action arose and held on facts, courts erred in issuing ex parte interim order in favour of the respondents thus aiding the judicial adventurism without even determining whether they had jurisdiction."
The learned senior counsel would end of his arguments with a note that unless the order passed by the lower Court is nullified, the meeting cannot go on and would ultimately pray to allow the C.R.P.

7. On the other hand on the part of the learned counsel appearing on behalf of the first respondent besides strongly supporting the order passed by the lower Court which is impugned herein dated 2.5.2002 thereby passing an interim order restraining the respondents therein from in any manner passing any resolution towards distribution of the shares,convening the board meeting which is warranted in the circumstances of the case and therefore,the said order has been passed by the lower Court at the appropriate time restraining the respondents till 3.6.2002. The learned counsel would also cite a judgment

reported in A.VENKATASUBBIAH NAIDU Versus S.CHELLAPPAN AND OTHERS (2000)7 Supreme Court Cases 695) wherein it is held that "against an order passed under Order 39 Rule 1 C.P.C., principle is well recognised that High Court ought to direct the party to seek other available remedies before invoking constitutional remedy."
On such averments, the learned counsel for the respondent would pray to dismiss the C.R.P. as not maintainable.

8. In consideration of the facts pleaded by the petitioner in the above C.R.P., having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the petitioner herein who is the 4th respondent in the Interlocutory Application and the 4th defendant in the suit having become aggrieved of the interim order passed by the lower Court on 2.5.2002 thereby generally restraining all the directors of the Mohamed Idris Bros.Pvt.Ltd. from convening the Extraordinary general Meeting or the Board Meeting of the company or from passing any resolution for the purpose of distribution of the shares of the company till 3.6.2002, testifying the validity of which, the petitioner has come forward to file the above C.R.P. under Article 227 of the Constitution of India thereby praying to invoke the supervisory powers of this Court and to set aside the interim order dated 2.5.2002.

9. The order passed by the lower Court has not been passed in the manner expected by law, nor having afforded proper opportunity for the petitioner to be heard, nor even having discussed any point valid in the context of the case since it is not an ex parte order passed by the Court, but parties are already in picture represented by their counsel and therefore, the time and the manner in which the said order has been passed by the lower Court is definitely not in accordance with law and therefore, the same has not only passed in violation of the principles of natural justice but also against all principles governing the provisions of law wherein an order of that sort could be passed. Therefore, the petitioner herein is perfectly right in challenging the order dated 2.5.2002 passed by the Court below invoking the provisions of Article 227 of the Constitution of India on illegality.

10. So far as the facts, circumstances and jurisdiction of the Court to pass such order in a pending
suit as it has been dealt with vividly by both parties during enquiry, there is absolutely no need on the part of this Court to go into such of the merits not only on account of the illegalities that have crept in passing the said order as aforementioned, but also it must be spelt out that since the said order restraining the respondents therein including the petitioner herein who are the directors of that company from convening the Board Meeting or passing any resolution in the distribution of shares only up to 3.6.2002 and the said date having already been gone by, it should be held that the very C.R.P. has become infructuous on account of the very order passed by the lower Court having lapsed as on date and not in force.

11. For all the above reasons though it is held that in initiating the above Civil Revision Petition, the same has been legally done, still by efflux of time, today since the order passed by the lower Court itself has been lapsed dying a natural death as on 3.6.2002, the above Civil Revision Petition becomes only liable to be dismissed as infructuous.

In result,

(i)subject to the above remarks, the above Civil Revision Petition is declared to have become infructuous.
(ii) However, in the circumstances of the case, there shall be no order as to costs.
(iii)Consequently,C.M.P.NO.6960 OF 2002 is also dismissed.

V.KANAGARAJ,J

Index:Yes
Internet:Yes
gr.

ORDER IN
C.R.P.(PD) NO.861 OF 2002